

REMARKS

The Office Action mailed March 7, 2007 has been received and reviewed. Claims 1-116 are in the case. Of these claims, claims 39-75 have been withdrawn by prior election. Claims 7, 19, 22-38, 94 and 95 were previously cancelled. Claims 76, 80, 96, and 107 are currently amended. Claims 76-80, 83-93, 96-100, 102-109, and 111-116 stand rejected under 35 U.S.C. §102(b) as being anticipated by Szlam (US 5,511,112). Claims 1-4, 8-18, 20, and 21 are rejected under 35 U.S.C. §103(a) as being unpatentable over Szlam in view of Nakatsu et al. (US 5,787,151). Claim 5 stands rejected under 35 U.S.C. §103(a) as being unpatentable over Szlam in view of Nakatsu et al. and further in view of Rogers et al. (5,946,386). Claims 6 and 28 stand rejected under 35 U.S.C. §103(a) as being unpatentable over Szlam in view of Nakatsu et al., in view of Rogers and further in view of Miner et al. (5,652,789).

For the reasons set forth below, claims 1-6, 8-18, 20, 21, 76-93 and 96-116 are believed to be in condition for allowance. Applicant respectfully requests favorable reconsideration of the application in view of the following remarks.

Rejection of Claims Under 35 U.S.C. §102(a)

Claims 76-80, 83-93, 96-100, 102-109, and 111-116 stand rejected under 35 U.S.C. §102(a) as being anticipated by Szlam. For a prior art reference to anticipate, every element of the claimed invention must be identically disclosed in a single prior art reference; and those elements must be arranged or connected together in a single reference in the same way as specified in the patent claim.

Referring to claim 76, the Szlam patent does not disclose interleaving of a variety of

responses. To interleave is to alternate back and forth. In Szlam, the system controller 11 determines whether an agent is available to handle a call. If an agent is available, the agent speaks for a while. In some embodiments, the system can play prerecorded wrap-up messages. The Szlam patent does not teach that the system can repeatedly alternate back and forth between a live voice, a scripted response and/or an interjection. The system just transfers from the live agent to one type of recording. Thus, the Szlam system does not allow for interleaving.

The Szlam patent clearly does not allow the agent to interleave the responses. In the Szlam patent, it is the system controller 11 that decides what to play and when to allow the agent to speak. See Col. 8, lines 63-67; Col. 9, lines 9-18; Col. 9, lines 59-61; Col. 19, lines 50-58; and Col. 19, lines 60-62. Szlam specifically teaches that the system controller 11, not the agent, is responsible for playing recorded content. In Column 23, lines 15-22 it states, “[i]n addition, closing or “wrap-up” statements, which typically require little or no response from the connected party, are prerecorded so that *these may be done by the system and not by the agent.*” To allow the agent to do the interleaving would defeat the purpose of Szlam by making the agent less efficient. In order for the agent to selectively interleave content, the agent would have to monitor the call which is clearly not taught by Szlam. To the contrary, “the agent has been relieved of the duty of conducting the non-productive wrap-up messages and may therefore be connected to another call while the wrap-up messages are being played.” See Col. 10, lines 2-5. Thus, when recorded scripts are played in Szlam, the agent is not available to do any interleaving.

Furthermore, the Szlam patent does not teach interleaving recorded scripted responses with recorded interjections. Figures 5 and 6, and the detailed description related thereto,

highlight how “the agent determines to play scripted questions 190” and how “the agent may interject with an interjection statement 192 such as “yes,” “no,” “uh huh,” laughter, and the like.” See page 18, lines 17-18 and page 19, lines 6-7. These are scripts that do not provide or solicit information, but allow an agent to respond to unexpected turns in the dialogue. In contrast, the Szlam patent does not teach interjection scripts or any category of scripts. In Szlam, when the system controller 11 determines that the contact’s response is not expected, the system controller to release the trunk. There is no attempt to interleave an interjection. Thus, Claim 76 is not anticipated by Szlam.

Independent claims 96 and 107 are also not anticipated by Szlam. Claims 96 and 107 teach interleaving by a human agent, which as discussed above, is not taught by Szlam. Furthermore, claims 96 and 107 teach the selection of predetermined answers by the agent from a script tree. Nowhere in Szlam is a script tree mentioned from which the agent makes selections. Thus, independent claims 76, 96, and 107 are not anticipated by Szlam.

With respect to claims 77-80, 83-93, 97-100, 102-106, 108, 109, and 111-116, claims that are dependant on an allowable base claim cannot be properly rejected under 35 U.S.C. §102(b). As presented hereinabove, Applicant asserts that claims 76-80, 83-93, 96-100, 102-109, and 111-116 not anticipated by the prior art of record. Reconsideration of these claims is therefore respectfully requested.

Rejection of Claims Under 35 U.S.C. §103(a)

To establish a prima facie case of obviousness, three basic criteria must be met. First, there must be some suggestion or motivation, either in the references themselves or in the

knowledge generally available to one of ordinary skill in the art, to modify the reference or to combine reference teachings. Second, there must be a reasonable expectation of success. Finally, the prior art reference (or references when combined) must teach or suggest all the claim limitations. (*See* MPEP §2142).

The initial burden is on the examiner to provide some suggestion of the desirability of doing what the inventor has done. References must expressly or impliedly suggest that claimed invention or the examiner must present a convincing line of reasoning as to why the artisan would have found the claimed invention to have been obvious in light of the teachings of the references. *Id.*

When applying 35 U.S.C. 103, the following tenets of patent law must be adhered to:

- (A) The claimed invention must be considered as a whole;
- (B) The references must be considered as a whole and must suggest the desirability and thus the obviousness of making the combination;
- (C) The references must be viewed without the benefit of impermissible hindsight vision afforded by the claimed invention; and
- (D) Reasonable expectation of success is the standard with which obviousness is determined.

Applicant respectfully submits that under these required tenets, and in view of the following arguments, Examiner has not established a prima facie case for obviousness.

Background of the Cited References and Claimed Invention

Szlam teaches a system and method for improving efficiency of an agent by eliminating agent-wait times. *See Szlam Col. 1, lines 11-15.* The computer controls when to give a call to an agent. Szlam does not teach the discretionary play of scripts outside the sales presentation information. Szlam does not teach a method of computer interaction with a customer wherein the goal is to make the customer think he or she is interacting with a human.

The purpose of Nakatsu does not even relate to the presentation of sales information. Nakatsu creates and delivers electronic greeting cards. Nakatsu does not teach the flexibility of script presentation or the ability to go “off script” with prerecorded conversational interjections. Nakatsu simply solicits greeting card information from a customer with the customer knowing full well that it is interacting with a computer.

Rodgers teaches the use of a call management system which transfers call control to a user workstation, thereby providing improved capabilities for the use without the limitations of telephone systems. Rogers allows for specific call handling options when a VIP call is detected. VIP Rules are defined in Rogers as specific rules “created to specify special handling for important callers, sets of callers or even for all callers. These VIP rules precede and augment direct user controls” Rogers teaches call handling protocols. Rogers does not teach a way to present sales presentations.

Miner teaches electronic assistants to handle certain aspects of calls and then transfer the call to the intended live recipient. The electronic assistant in Miner does not attempt to appear as a live agent. In Miner, the electronic assistant announces to the caller, “I’m the electronic assistant for John Smith.” Miner does not teach nor suggest a novel way to present a sales presentation using conversational scripts.

There are prior art patents that suggest ways to present prerecorded information. The problem that Applicant's invention overcomes is the mechanical presentation of prerecorded information that tips off a customer to suspect that they are interacting with a computer playing a prerecorded presentation, instead of interacting with a live person. This is a significant problem for telemarketers that has not been addressed by the prior art. There has been a long-felt need for telemarketers using computers to accomplish mass calling, to overcome the problem of losing sales due to hangups when customers realize that they are interacting with a computer. The prior art has never before had to address the level of sophistication and suspension of today's customers when it comes to telemarketing. The prior art does not teach the use of prerecorded conversational approaches to presenting information. The prior art does not teach using prerecorded scripts to mimic how people *actually* talk. The prior art may teach presenting preapproved information in prerecorded form, but it does not teach the *prerecorded* adlibbing and prerecorded conversational interjecting that Applicant teaches. The prior art teaching prerecorded presentations of information, is mechanical and structured in such a way that it is quickly obvious to a customer that the information is not "live." Applicant overcomes this long-felt problem.

Prerecorded sales presentations in today's world must be conversational and fluid with interruptions and quick affirmations and comments or remarks that have nothing to do with the information being presented. Each call is unique and the agent must have the ability to react to the call with prerecorded interjection type scripts that are not part of the sales presentation information. Agents must be allowed to intervene on the fly with conversational recordings that are "off scripts" or in other words that are not part of the

sales presentation information. Customers are at a level of sophistication regarding telemarketers that they've never been at before. It is not enough to present sales information in a dialogue form where each prerecorded script drives the conversation a desired direction to efficiently present information. The dialogue must be human sounding. When prerecorded script presentations are mechanical the call and the customer are lost. Applicant solves the problem in a novel way by allowing the telemarketer to appear to give *real-time, adlib, non-informational responses without going live*. Applicant provides an interjection menu that does not relate to the information script menu. Applicant allows the telemarketer to play things such as "uh huh," "yeah," "I'm sorry, what?" "<throat clear sound>," "<laugher track>" etc. etc. This allows an agent to be conversational *and* prerecorded. This has not been done before.

In a live conversation between two people, there is a flow to the conversation; there are anticipated responses and counter-responses. There are also times that merit an interjected response that is simply an interjection that has nothing to do with the point of the conversation. For example, in a live conversation, one party might say something that triggers a topical joke. In a live conversation between two humans, the reply to the joke has nothing to do with the point of the conversation, however, regular humans will not remain silent; they will respond with a courtesy laugh or some other response.

Script players that only play scripts to provide information, or that solicit some information or response, or that simply serve to drive the dialogue to a certain conclusion, cannot provide the conversational dialogue necessary to have the contact believe it is conversing with a live human and not with a recorded voice played by a computer

program.

A sample conversation without the present invention may go as follows:

Telemarketer: "Hello Bob, how are you doing today?"	Script 1
Contact: "Fine thanks, how are you?"	Response 1
Telemarketer: "Great. The reason I'm calling is that you expressed interest in films having family content. Is that correct?"	Script 2
Contact: "Yes. I really believe that there is a lack of good family films these days. Some many of the films are rated R and even the PG-13 films contain a lot of violence don't you think? I mean it's hard to know what films I can take my 10-year old to."	Response 2
Telemarketer: "How many kids do you have?"	Script 3
Contact: "Three crazy monkeys."	Response 3
Telemarketer: Well we have two films especially suited for children, would you be interest in hearing about our program?	Script 4
Contact: <sneezes>	Response 4
Contact: Well first I'd <the rest of the contact's sentence is inaudible	Response 5
Telemarketer:	At this point, the telemarketer either repeats Script 4 or switches to live voice mode.

There are certain points in this dialogue where if the telemarketer simply plays the next prerecorded script that is merely intended to present information, solicit information, or drive the dialogue forward in a particular direction, then the appearance of a live conversation between two live humans is lost and more than likely, the sale would be lost as well.

For example, during the Contact's "Response 2", there is the quick question "don't you think?" The question is probably rhetorical, but in a live conversation between two humans, you would interject with a quick "yeah" or "uh-huh." These types of interjections simulate real human conversation. Without interjections of these types, the conversation is mechanical and the Contact will become suspicious. The end of "Response 2" is not a question, but also merits a response. In a live conversation, a person would recognize that the Contact is seeking affirmation. In live conversation a human would counter-respond with something like, "I know what you mean." Without this interjection that is not content-related, the transition between Response 2 and Script 3 would be awkward.

The Contact's Response 3 is clearly an attempt at humor. In a live conversation between two humans, you would not simply ignore that attempt and deliver Script 4. A live human would interject with a courtesy laugh. The Contact would expect a counter-response to Response 3 that has nothing to do with the point of the conversation. Playing Script 4 at that point would make the Contact feel ignored or even worse, foolish. If the Telemarketer did not somehow acknowledge the Contact's attempt at humor in "Response 3", the Contact would become suspicious.

Response 4 would also merit an interjection in a live conversation between two

humans such as “God bless you,” “Gut Zundheit.” This type of non-informational interjection is key to making the conversation real.

If the telemarketer had to replay a script verbatim it would also be a clear giveaway that the Contact was speaking with a recorded voice and not speaking with a live person. In normal conversation, people do not repeat things verbatim. If the telemarketer had to go into live mode, the telemarketer runs the risks of not sounding like the prerecorded script, or not having the same energy as that portrayed on the recorded script. The telemarketer also has to interact with the device or software more which could increase the chance of making a mistake that would lose the call.

With Applicant’s device and method, this conversation more closely approximates a real conversation between two humans without the Telemarketer needing to go into live mode. For example:

Telemarketer: “Hello Bob, how are you doing today?”	Information Script 1
Contact: “Fine thanks, how are you?”	Response 1
Telemarketer: “Great. The reason I’m calling is that you expressed interest in films having family content. Is that correct?”	Information Script 2
Contact: “Yes. I really believe that there is a lack of good family films these days. Some many of the films are rated R and even the PG-13 films contain a lot of violence don’t you think? I mean it’s hard to know what films I can take my 10-year old to.”	Response 2 Telemarketer plays <i>Interjection Script 1</i> “yeah”
Telemarketer: “I know what you mean”	<i>Interjection Script 2</i>
Telemarketer: “How many kids do you have?”	Information Script 3

Contact: "Three crazy monkeys."	Response 3
Telemarketer: "laughs"	<i>Interjection Script 3</i>
Telemarketer: Well we have two films especially suited for children, would you be interest in hearing about our program?	Information Script 4
Contact: <sneezes>	Response 4
Telemarketer: :God Bless you."	<i>Interjection Script 4</i>
Contact: Well first I'd <the rest of the contact's sentence is inaudible	Response 5
Telemarketer: I'm sorry, what did you say?	<i>Interjection Script 5</i>

The ability to play interjection scripts allows the Telemarketer to be conversational without having to go into live voice mode unnecessarily. The ability to interleave recorded scripts from a script menu and an interjection menu and even a live voice, is not taught by the combination of references cited by the Examiner.

Claims 1-4, 8-18, 20, and 21 stand rejected under 35 U.S.C. §103(a) as being unpatentable over Szlam in view of Nakatsu. The combination of these claims does not teach nor suggest each and every limitation of Applicant's independent claim 1. The Examiner states that Szlam teaches the interleaving of responses selected by a computer. See office action p. 3. Thus Szlam teaches away from Applicant's invention. Applicant has an agent monitoring a call so that if conversational interjection scripts need to be played in response to, or over the top of, a contact's statement, the agent can interleave the interjection into the presentation. In Szlam, because the

system controller is determining content, if the content is unexpected, the Szlam system controller goes off line. See Col. 19, line 63 to Col. 20, line 2. Nakatsu also does not suggest the interleaving of interjections into a script presentation. Nakatsu does not teach using an agent to present scripts at all.

Furthermore, Applicant submits that there is no suggestion or motivation to combine the Szlam and Nakatsu references, as is required by MPEP § 2143.01. The Federal Circuit Court stated in *In re Denis Rouffet, Yannick Tanguy and Frederic Berthault*, 149 F.3d 1350 (Fed. Cir. 1998) that when determining the patentability of a claimed invention which combines two known elements, the question is whether there is something in the prior art as a whole to suggest the desirability, and thus the obviousness, of making the combination. *Id.* The Court reiterated its prior statements that,

"virtually all [inventions] are combinations of old elements."
Environmental Designs, Ltd. v. Union Oil Co., 713 F.2d 693, 698,
218 U.S.P.Q. (BNA) 865, 870 (Fed. Cir. 1983); see also *Richdel,*
Inc. v. Sunspool Corp., 714 F.2d 1573, 1579-80, 219 U.S.P.Q.
(BNA) 8, 12 (Fed. Cir. 1983). Therefore an examiner may often
find every element of a claimed invention in the prior art. If
identification of each claimed element in the prior art were
sufficient to negate patentability, very few patents would ever
issue. Furthermore, rejecting patents solely by finding prior art
corollaries for the claimed elements would permit an examiner to
use the claimed invention itself as a blueprint for piecing together
elements in the prior art to defeat the patentability of the claimed
invention. Such an approach would be "an illogical and
inappropriate process by which to determine patentability."
Sensonics, Inc. v. Aerosonic Corp., 81 F.3d 1566, 1570, 38
U.S.P.Q.2D (BNA) 1551, 1554 (Fed. Cir. 1996).

To prevent the use of hindsight based on the invention to defeat patentability of the invention, this court requires the examiner to show a motivation to combine the references that create the case of

obviousness. In other words, the examiner must show reasons that the skilled artisan, confronted with the same problems as the inventor and with no knowledge of the claimed invention, would select the elements from the cited prior art references for combination in the manner claimed.

There are no reasons or suggestions to combine the prior art references in the manner claimed by Applicant.

If a proposed modification would render the prior art invention being modified unsatisfactory for its intended purpose, then there is no suggestion or motivation to make the proposed modification. *In re Gordon*, 733 F.2d 900, 221 USPQ 1125 (Fed. Cir. 1984). Szlam is about computer control. Everything is controlled by the system controller 11. Nakatsu is about creating greeting cards. There is no agent involved. There is no suggestion to combine Nakatsu and Szlam and the Examiner has not alluded to any.

Additionally, both Szlam and Nakatsu solicit key pad responses or entries by the party or customer. See Szlam Col. 20, line 53-59. See Nakatsu Col. 9, line 42 to Col. 10 line 16; and Col. 10, lines 52-65. There is no attempt to create the appearance of a live conversation with a human while in reality the computer is playing recorded scripts. The purpose of Applicant's claimed invention is to mask the fact that a computer is involved at all. The cited art makes no attempt to conceal this fact. Thus, it would not be obvious to anyone skilled in the art to use Szlam or Nakatsu to accomplish the claimed invention of Applicant. Accordingly, Applicant submits that is not obvious to combine the Szlam and Nakatsu references in rejection of Applicant's claim 1.

With respect to claims depending from claim 1, claims that are dependant on an allowable base claim are generally allowable. As presented hereinabove, Applicant asserts that

claim 1 is not rendered obvious by the prior art of record, specifically Szlam in view of Nakatsu.

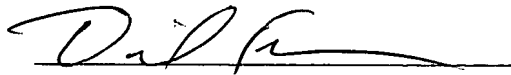
Thus, the pending claims are allowable for at least the reason that they are dependant on an allowable base claim.

Conclusion

Applicant respectfully submits that its claims are not anticipated nor rendered obvious by the cited art. In the event that the examiner finds any remaining impediment to the prompt allowance of any of these claims, which could be clarified in a telephone conference, the examiner is respectfully urged to initiate the same with the undersigned.

DATED this 7th day of June, 2007.

Respectfully submitted,



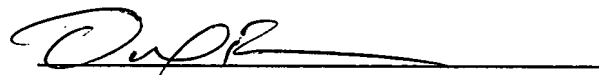
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